

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	CC Docket No. 91-142
)	
BRAVO CELLULAR)	File No. 10673-CL-P-579-A-89
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A in)	
Market 579 - North Carolina 15-Cabarrus)	
)	
CENTAUR PARTNERSHIP)	File No. 10720-CL-P-631-A-89
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A in)	
Market 631 - South Carolina 7-Calhoun)	
)	
EJM CELLULAR PARTNERS)	File No. 10116-CL-P-721-A-89
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A)	
in Market 721 - Wyoming 4-Niobrara)	
)	
EJM CELLULAR PARTNERS)	File No. 10567-CL-P-596-A-89
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A)	
in Market 596 - Oklahoma 1-Cimarron)	

TO: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CONSOLIDATED REPLY TO OPPOSITIONS

1. Castle Trust, Orbit Cellular, RSA Cellular Partners, Schuylkill Mobile Fone, Inc., Scott Reardon, Skyline Cellular Partners, Sunrise Trust, Walker Trust, and Turnpike Cellular Partners (collectively referred to herein as "Pending Petitioners") hereby reply to the Oppositions filed by various parties to the Pending Petitioners' Petition for Reconsideration in connection with the above-captioned applications. ^{1/}

2. Data and Centaur assert that the Pending Petitioners

^{1/} Separate Oppositions were filed by: (a) Bravo Cellular, L.L.C. ("Bravo"); (b) Data Cellular Systems, Cellular Pacific and North American Cellular (collectively, "Data"); and (c) Centaur Partnership and EJM Cellular, L.L.C. (collectively, "Centaur").

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lack standing (Centaur) or are not parties to this proceeding (Data). But as the Commission and the other parties are aware, the Pending Petitioners filed timely applications for all the markets involved in the Algreg Cellular Engineering proceeding, including the markets involved in the captioned applications. Pending Petitioners' applications will be dismissed upon grant of any mutually exclusive applications in those markets. As a result, Pending Petitioners will be adversely affected by any such grant, and they are therefore entitled to seek reconsideration thereof. See, e.g., Section 1.106(b)(1) of the Commission's rules. ^{2/}

3. Bravo and Data both seem to assert that the captioned applications were granted at some earlier date, and that the Public Notice (Report No. CWS-99-9, released November 27, 1998) in response to which the Pending Petitioners filed their Petition for Reconsideration is merely a "clarification" (Data) or an "indicat[ion that] the Commission was 'reissuing' the authorizations with new grant dates, not granting the applications" (Bravo, emphasis in original).

4. But final Commission action does not occur without the issuance of some public notice concerning that action, which public notice affords interested parties the opportunity to seek review of the action. While the Commission (or one of its subordinate

^{2/} In their Petition for Reconsideration (at footnote 2), Pending Petitioners noted that they had filed a "Request for Rescission of Authorizations" in May, 1998. That Request, which was incorporated by reference in the Petition, provided detailed information concerning the Pending Petitioners' interest in this matter. Pending Petitioners have also described their interests in, inter alia, a Statement for the Record, filed in CC Docket No. 91-142 on June 26, 1998, and an Opposition to Motion to Strike, filed August 5, 1998. Those interests are clearly not speculative, unlike the interests which were asserted -- and rejected by the Commission -- in Conn-2 RSA Partnership, 75 CR 854 (1994).

offices) may indeed have, in some technical sense, "granted" these applications in 1997, no public notice of such action was released until November, 1998. As a result, any such action which might have been taken never became final and is still not final. Any attempt to suggest that petitions for reconsideration of the grant of the captioned applications could or should have been filed at some earlier date is plainly wrong.

5. Bravo also characterizes as "sheer nonsense" and "mislead[ing]" the Pending Petitioners' concern about grant of the captioned application notwithstanding the pendency of petitions for reconsideration of Algereg Cellular Engineering ("Algereg V"),¹² FCC Rcd 8148 (1997). According to Bravo,

the Commission's reconsideration of its decision in Algereg V will, without question, relate to all the applications against which valid and timely reconsideration was sought.

Bravo Opposition at 6. Pending Petitioners appreciate this concession by Bravo, but Pending Petitioners are still concerned.

6. The problem arises from the fact that, in Algereg V, the Commission bifurcated this already-bifurcated proceeding, granting some applications but leaving the four captioned applications to be processed separately. As a result, the captioned applications were granted separately (as reflected in the November, 1998 public notice).^{3/} While those grants were obviously made possible by Algereg V, the agency actions constituting those grants were plainly

^{3/} Both Data and Bravo suggest in passing that they have expended significant amounts of money constructing and operating their systems. Data Opposition at 3, Bravo Opposition at 7. Of course, while the grants may have permitted them to make such expenditures, any and all such expenditures were undertaken at the permittees' own risk. E.g., Teleprompter Corp., 50 R.R.2d 125, 127 (CATV Bur. 1981); Improvement Leasing Co., 73 FCC2d 676, 684 (1979), aff'd, Washington Ass'n for Television and Children v. FCC, 665 F.2d 1264 (D.C. Cir. 1981).

not part of the Algreg V decision. It therefore appears that an argument could be made that those separate grants might be said to become "final" if no timely reconsideration of them is sought. Such finality would further complicate the already complicated morass which is the Algreg proceeding. The purpose of the Pending Petitioners' Petition for Reconsideration was to focus on precisely this question and, ideally, avoid such a conundrum.

7. Finally, all of the Oppositions devote considerable energy to the claims that Pending Petitioners are somehow abusing the Commission's processes, engaging in "greenmail", perpetrating a "sham", filing "frivolous pleadings", and generally subjecting themselves (and undersigned counsel) to sanctions. Pending Petitioners addressed, and refuted, virtually identical charges in their "Supplement to Statement for the Record" filed in this matter on July 23, 1998, which Supplement is incorporated herein by reference. Pending Petitioners stand by that refutation, including the discussion therein of the obvious non-applicability of K.O. Communications to the facts of this case.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Pending Petitioners

January 21, 1999

CERTIFICATE OF SERVICE

Harry F. Cole hereby certifies that on this 21st day of January, 1999, I caused copies of the foregoing "Consolidated Reply to Oppositions" to be hand- delivered (as indicated below) or sent via U.S. first class mail, postage prepaid, addressed to the following:

Gerald Vaughan, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554
(Hand Delivered)

Steve Weingarten, Chief
John Greenspan, Esquire
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., Room 700
Washington, D.C. 20554
(Hand Delivered)

John P. Bankson, Jr., Esquire
Drinker, Biddle & Reath
901 15th Street, N.W., Suite 900
Washington, D.C. 20005-2503
Counsel for A-1 Cellular Communications,
et al.

Alan Y. Naftalin, Esquire
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Alpha Cellular

Larry S. Solomon, Esquire
Shook, Hardy & Bacon, L.L.P.
Market Square West, Suite 600
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2165
Counsel for Bravo Cellular, L.L.C.

Carl W. Northrop, Esquire
Paul, Hastings, Janofsky & Walker, L.L.P.
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
Counsel for Thomas Domencich & the
Committee for a Fair Lottery

David L. Hill, Esquire
O'Connor & Hannan, L.L.P.
1919 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20006
Counsel for Cellular Pacific, et al.

Stephen Kaffee, Esquire
733 15th Street, N.W., Suite 700
Washington, D.C. 20005
Counsel for Crystal Communications Corp.

Barry H. Gottfried, Esquire
Fisher, Wayland, Cooper, Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006-1851
Counsel for Applicants Against Lottery
Abuse

David J. Kaufman, Esquire
Brown, Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
Counsel for Alabama Wireless, Inc.

Richard S. Myers, Esquire
Myers Keller Communications Law Group
1522 K Street, N.W., Suite 1100
Washington, D.C. 20005
Counsel for Buckhead Cellular
Communications Partnership

Donald J. Evans, Esquire
James A. Kline, IV, Esquire
Evans & Sill, P.C.
919 18th Street, N.W., Suite 700
Washington, D.C. 20006
Counsel for Miller Communications, Inc.

A. Thomas Carroccio, Esquire
Bell, Boyd & Lloyd
1615 L Street, N.W., Suite 1200
Washington, D.C. 20036-5610
Counsel for The Joint Petitioners

William E. Zimsky, Esquire
P.O. Box 3005
Durango, Colorado 81302
Counsel for ZDT Partnership

James F. Ireland, III, Esquire
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006-3458
Counsel for Cellular Applicants Coalition

William J. Franklin, Esquire
William J. Franklin, Chartered
1200 G Street, N.W., Suite 800
Washington, D.C. 20005

Peter Gutmann, Esquire
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

/s/  Harry F. Cole
Harry F. Cole

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